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LAW OF THE SEA

I. The 1973 Setting

1. The long-planned third United Nations Conference on the Law of the Sea got underway with an organizational meeting in New York during December 1973. A ten-week substantive session will take place in Caracas, Venezuela, in the summer of 1974. Heralded by many as one of the most important and far-reaching Conferences ever held under United Nations auspices, these meetings will include representatives from over 140 nations, including many outside the United Nations organization.

2. Under consideration in these negotiations are issues that not only affect the economic, military, and political interests of the United States, but also the interests of the international community in attaining fair and equitable international accords on the future use of the oceans. For if there are no agreements on what the rules are for conducting activities in these sea areas, which constitute some 70 percent of the surface of the earth, many fear that we will run the risk of confrontation and possible conflict, and a general derogation of international law.

3. Much of the need for international agreement has been brought about by the recent development of technology which has made it possible to exploit new sources of critically needed petroleum in the continental margins and metallic nodules on the deep seabeds. Rules for governing such activity are needed to guarantee efficient exploitation of these resources. International solutions are also required to attain sound conservation and management of global fisheries stocks in order to satisfy the growing demand for protein, and to protect against growing threats to the marine environment.

II. The Administration's Approach

4. The preparations for this Conference in the United Nations Seabed Committee have been long and arduous, and to some extent incomplete. Although agreement could not be reached on draft treaty articles for the major political issues at the sixth preparatory session last summer, it was felt that most countries believe this is the job for the Conference itself and hence at the General Assembly last fall it was decided to proceed on schedule. Nevertheless, in the preparatory sessions a widespread common understanding of the outlines of a broadly supported Law of the Sea Treaty emerged. Its basic elements appear to be:

a. A maximum limit of 12-miles for the breadth of the territorial sea.

b. Adequate guarantees of transit in straits used for international navigation.

c. Broad coastal State control over seabed and living resources beyond the territorial sea, coupled with provision for the interests of other States and the international community in general.

d. A balancing of coastal State and international community interests in scientific research and the protection of the marine environment.

e. An international regime and machinery for the deep seabed that accommodates the interests of consumers, as well as those of States having the capacity to exploit, with the desire for machinery with comprehensive powers.

5. Early in the preparatory sessions the United States introduced draft treaty articles that indicated our willingness to accept a 12-mile territorial sea if a limited but vital right of free transit through and over straits used for international navigation were assured. To allay the fears of many states we have made proposals to restrict pollution and foster navigational safety in these straits. Some States, like Spain, still adamantly insist on the concept of "innocent passage." A number of States are conditioning their acceptance of the 12-mile figure on the satisfactory settlement of other issues like a 200-mile economic resource zone or a patrimonial sea. Nevertheless in last summer's session there seemed to be a better comprehension of the rationale behind the US position and of the necessity for finding acceptable provisions on this issue in order to have a successful Conference.

6. Last July in the preparatory session in Geneva, the United States tabled draft articles which would give coastal States economic rights and duties in a broad Coastal Seabed Economic Area. This includes the right to authorize and regulate all exploitation of minerals in the area as well as the construction, operation, and use of offshore facilities, such as offshore ports and airports, affecting their economic interests. The draft articles stipulated that in this area the coastal States would have to conform to international standards for the prevention of pollution, unjustified interference with other uses of this marine environment, and to strictly honor the integrity of investments. Some revenue sharing with the international community and dispute settlement machinery were also proposed. While many States are generally favorable to the economic zone concept, there remain wide differences as what should be the defined outer limit of this Area. A preponderant view favors 200 miles, but many broad shelf countries prefer an alternative seaward limit which would embrace the full continental margin where it extends beyond 200 miles. The land-locked and other geographically disadvantaged States, of course, want a more restricted Economic Area with revenue sharing on the remaining part of the continental margin.

7. In another area of broader coastal State control over resources, the United States submitted draft fisheries articles in the summer of 1972 and has continued to press for their acceptance. Known as the "species approach," the concept uses the biological

characteristics of the fish for determining that the most efficient conservation and management authority over coastal stocks should be the coastal State. We have proposed that such rights be subjected to internationally agreed standards, including standards to ensure maximum utilization of fisheries, with compulsory dispute settlement. Our draft articles also provide that the host State would have management authority and preferential rights to anadromous fish like salmon which are spawned in fresh water streams, migrate far out to sea and return to their place of origin to spawn. International organizations would manage tuna and other highly migratory species that roam widely over the world's oceans.

8. The reception to these complex fisheries proposals is mixed, with developing coastal States generally favoring broad coastal authority, while distant-fishing States like the Soviet Union, Japan, and the UK are apprehensive lest they lose their traditional fishing grounds. Most do agree that there is a serious problem because of overfishing resulting from a lack of adequate regulatory means to ensure sound conservation and equitable allocation.

9. At last summer's session of the Seabed Committee the United States proposed treaty articles that would preserve and protect the marine environment through international cooperation. Specifically, the basic obligations of States to protect the marine environment were spelled out, as well as the competence of international organizations and States to establish standards for dealing with these problems, and the general basis for enforcement. On the question of standards

for seabed-source pollution in the coastal zone, some States feel that minimum standards are not necessary and that primary responsibility for establishing seabed standards should lie with the coastal States. In regard to vessel-source pollution, several States seek the option to impose supplemental standards for special regions like the Arctic, where in their view, international standards are inadequate. Progress in coping with this vessel-source pollution problem was made at the Marine Pollution Conference of the Intergovernmental Maritime Consultative Organization in October 1973.

10. The United States also proposed last summer that there be international cooperation in facilitating scientific research in the territorial sea and providing for a set of obligations for the conduct of research in the areas beyond the territorial sea where the coastal State exercises jurisdiction over seabed resources and coastal fisheries. These obligations would include: advanced notification, coastal State participation, flag State certification of the researcher, sharing of data, assistance in assessing the data, and compliance with environmental standards. Coastal States would not be able to interfere with scientific research by arbitrarily withholding consent. Many States, however, fearing the economic implications of scientific research conducted by foreigners in their coastal waters, are insisting on a strick consent regime.

11. With respect to an international regime and machinery for the deep seabed, the United States, adhering to the United Nations common heritage principles for this region, tabled a draft seabed treaty in 1970. Since then we have adjusted these proposals and

made new ones, always stressing that the essential elements of any agreed seabed management system must guarantee access to resources under reasonable conditions and non-discriminatory rules and regulations, which would promote maximum economic efficiency in such operations and protect the integrity of investment. There remain, however, appreciable differences over the make-up and powers of an international seabed resource authority, and who will actually do the exploiting in this region.

III. Prospects

12. Though discernable progress has been made in isolating the issues and identifying the specific areas for law of the sea accommodation, there are still many strong and divergent views held by countries and groups of countries. This means that reaching important agreements at this forthcoming conference will be slow and difficult, and there may be a tendency by some to let the negotiations stall or drag on slowly, perhaps for years. Nevertheless, most countries see the inherent danger of continual unilateral claims in the sea, and recognize that a timely agreement is in the interest of all. They realize that unless this opportunity is taken to establish new institutions and order in the oceans, there may never be another chance.